

Town of Kittery  
Municipal Complex  
200 Rogers Road  
Kittery, Maine 03904

## SERVICES AGREEMENT

THIS AGREEMENT is made this 30<sup>th</sup> day of September, 2011 by and between the Town of Kittery under the laws of the State of Maine and located in the County of York, State of Maine (hereinafter "OWNER") and Warren Environmental, Inc (aka A&W Maintenance, Inc) of Carver, MA (hereinafter "CONTRACTOR"),

### WITNESSETH:

In consideration of the mutual covenants and conditions contained herein, the OWNER and the CONTRACTOR agree as follows:

#### I. SCOPE OF SERVICES

The CONTRACTOR shall furnish all of the services, materials and perform all of the work as described in the CONTRACTOR's Proposal Rev. #3 dated September 22, 2011 attached hereto and made a part hereof (hereinafter, collectively referred to as the "Services"), and the CONTRACTOR covenants that it shall do everything required by this Agreement, the conditions of the Agreement (together with the General, Supplementary and other Conditions, if any), the Request for Proposals, the Specifications, the Drawings and the Proposal in return for payment as provided herein.

A. The CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all analyses, reports, and other Services furnished by the CONTRACTOR under this Agreement. The CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in his analysis, reports, and other Services. Deficiencies are defined as willful or negligent acts that distort or falsify the state of the art of the products and Services developed and provided hereunder, or willful or negligent non-assignment of personnel or assignment of unqualified personnel to perform the duties hereunder.

B. Approval by OWNER of analyses, reports, and other services furnished hereunder shall not in any way relieve the CONTRACTOR of responsibility for the technical adequacy of the work. Neither OWNER's review, approval or acceptance of, nor payment for, any of the Services shall be construed to operate as a waiver of any rights

under this Agreement or any cause of action arising out of the performance of this Agreement, and the CONTRACTOR shall remain liable in accordance with applicable law for all damages to OWNER caused by the CONTRACTOR's willfully negligent performance of any of the Services furnished under this Agreement.

## II. CONTRACTOR OBLIGATIONS

The CONTRACTOR warrants:

- A. That it will furnish all vehicles, materials, personnel, tools and equipment, except as otherwise specified herein, and do everything necessary and proper to satisfactorily perform the Services required by this Agreement.
- B. That it is financially solvent, is experienced in and competent to perform the Services and is able to furnish the vehicles, materials, personnel, tools and equipment to be furnished by it.
- C. That it is familiar with all federal, State and local statutes, laws, rules, regulations, ordinances and orders which may in any way affect the Services.
- D. That it has carefully examined the Request for Bid Proposals, the Specifications, this Agreement and the site of the Services and has conducted its own investigation of the nature and location of the Services, the character of equipment and personnel needed to perform the Services and all conditions which may in any way affect the performance of the Services.
- E. That any increase in CONTRACTOR'S costs during the term of this Agreement shall be the sole responsibility of the CONTRACTOR.

## III. COMPLETION OF SERVICES/COMPLETION DATE

The Services to be performed under this Agreement shall be commenced on or before October 11, 2011 and substantially completed on or before October 29, 2011. A performance and payment bond in the amount of the contract to the satisfaction of the Owner is required.

## IV. CONTRACT PRICE

The OWNER shall pay the CONTRACTOR for the performance of Services under this Agreement the lump sum of \$152,500 (the "Contract Price"). If the first mobilization is completed within 4 business days, the CONTRACTOR will rebate the OWNER a sum of \$6,000. If the second mobilization is completed within 4 business days, the CONTRACTOR will rebate the OWNER an additional \$6,000.00.

## V. PROGRESS PAYMENTS

CONTRACTOR shall submit for OWNER'S Approval, monthly invoices for the Services performed hereunder in the previous month. The OWNER shall pay CONTRACTOR such approved amounts within thirty (30) days from OWNER'S receipt of said invoice.

Payments due and unpaid under this Agreement shall bear interest from the date payment is due at the maximum rate permitted under Maine law at the time of the delinquency for unpaid municipal taxes.

## VI. GUARANTEE

A. To the extent construction or materials are provided in the provision of Services hereunder, the CONTRACTOR and the subcontractors, if any, shall guarantee their work against any defects in workmanship and materials for a period of one year from the date of the OWNER's written acceptance of this project, and agree to repair or replace at no cost or expense to the OWNER all work, materials and fixtures at any time during said one year period.

B. The CONTRACTOR represents that in the performance of its obligations hereunder, it will perform in accordance with applicable standards of conduct for professionals in the field. Where an engineer's stamp or seal is required in the conduct of such Services, the documents shall be stamped by a professional engineer registered in the State of Maine.

## VII. PERMITS AND LICENSES

Permits and licenses necessary for the prosecution of the Services shall be secured and paid by the CONTRACTOR.

## VIII. OWNER'S RIGHT TO TERMINATE CONTRACT

Without prejudice to any other right or remedy, the OWNER may terminate this Agreement for cause by providing the CONTRACTOR and its surety with seven (7) days' written notice of termination. For purposes of this Agreement, cause includes, but is not limited to: the adjudication of the CONTRACTOR as a bankrupt; the making of a general assignment by the CONTRACTOR for the benefit of its creditors; the appointment of a receiver because of the CONTRACTOR's insolvency; the CONTRACTOR's refusal or failure, except for cases in which extension of time is provided, to supply enough properly skilled workers or proper materials to perform the Services; the CONTRACTOR's disregard of federal, state or local statutes, laws, codes, rules, regulations, orders or ordinances; and the CONTRACTOR's violation of any provisions of this Agreement. In the event of a termination for cause, the OWNER may take possession of the premises and of all materials, tools and appliances thereon and finish the Services by whatever method it may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the Services

are finished. If the unpaid balance of the Agreement price shall exceed the expense of finishing the Services, including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the CONTRACTOR. If such expense shall exceed such unpaid balance, the CONTRACTOR shall pay the difference to the OWNER.

Further, the OWNER may terminate this Agreement for convenience upon thirty (30) days' written notice to the CONTRACTOR, in which case, the OWNER shall pay the CONTRACTOR for all Services satisfactorily performed and materials purchased up to the date of receipt of such notice by the CONTRACTOR. In the event that the OWNER terminates this Agreement for cause and it subsequently is determined that cause did not exist, such termination shall be deemed to be for convenience.

#### IX. INSURANCE

Except as otherwise provided by this Agreement, the CONTRACTOR and its subcontractors and consultants shall obtain and maintain, throughout the term of this Agreement and for a period of at least two years following the completion of Services under this Agreement, at no expense to the OWNER, the following insurance coverages:

a. **Public Liability Insurance** in the amount of not less than One million dollars (\$1,000,000) to protect the CONTRACTOR, any subcontractor performing Services under this Agreement, and the OWNER from any types of claims and damages that may arise from operations under this Agreement, whether such operations be by CONTRACTOR or by a subcontractor or by anyone directly or indirectly employed by them.

b. **Automobile Liability Insurance** in the amount of not less than One million dollars combined single limit, to protect the CONTRACTOR, any subcontractor performing work covered by this Agreement, and the OWNER from any claims and damages that may arise from operations under this Agreement, whether such operations be by CONTRACTOR or by a subcontractor or by anyone directly or indirectly employed by them.

c. **Workers' Compensation Insurance** in amounts required by Maine law and **Employer's Liability Insurance**, as necessary, as required by Maine law. In case any class of employees engaged in hazardous work under this Agreement is not protected under the Workers' Compensation Act, the CONTRACTOR shall, at its own expense, provide for the protection of its employees not otherwise protected.

d. All such insurance policies shall name the OWNER and its officers, agents and employees as additional insureds, except that for purposes of workers' compensation insurance, the CONTRACTOR and its subcontractors instead may provide a written waiver of subrogation rights against the OWNER. The CONTRACTOR, prior to commencement of Services under this Agreement, and any of its subcontractors, prior to commencement of Services under any subcontract, shall deliver to the OWNER

certificates satisfactory to the OWNER evidencing such insurance coverage's, which certificates shall state that the CONTRACTOR and its subcontractors must provide written notice to the OWNER at least thirty (30) days prior to cancellation, non-renewal, material modification or expiration of any policies, evidenced by return receipt of United States Certified Mail. Replacement certificates shall be delivered to the OWNER prior to the effective date of cancellation, termination, material modification or expiration of any such insurance policy. The CONTRACTOR shall not commence Services under this Agreement until it has obtained all insurance coverage's required under this paragraph nine and such insurance policies have been approved by the OWNER, nor shall the CONTRACTOR allow any of its subcontractors to commence Services on any subcontract until all such insurance policies have been obtained by the subcontractor and approved by the OWNER. All such insurance policies shall have a retroactive date which is the earlier of the date of this Agreement between the parties or the CONTRACTOR's Commencement of Services hereunder.

#### X. INDEMNIFICATION

The CONTRACTOR agrees to defend, indemnify, and hold harmless the OWNER, its officers, agents, and employees against any and all liabilities, causes of action, judgments, claims or demands, including attorney's fees and costs, for personal injury (including death) or property damage arising out of or caused by the performance of Services under this Agreement by CONTRACTOR, its subcontractors, their agents, representatives or employees.

#### XI. LIENS

Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR delivers to the OWNER a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof and, in either case, an affidavit that so far as it has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed, but the CONTRACTOR may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the OWNER to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to the OWNER all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

#### XII. ASSIGNMENT

Neither party to the Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any prior moneys due or to become due to it hereunder, without the previous written consent of the OWNER.

### XIII. SUBCONTRACTS

The CONTRACTOR shall not sublet any part of this Agreement without the prior written permission of the OWNER. The CONTRACTOR agrees that it is fully responsible to the OWNER for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

### XIV. USE OF PREMISES

The CONTRACTOR shall confine its apparatus, the storage of materials and the operations of its workers to limits indicated by law, ordinances and permits and shall not otherwise unreasonably encumber the premises with its materials. If any part of the project is completed and ready for use, the OWNER may, by written and mutual consent, without prejudice to any of its rights or the rights of the CONTRACTOR, enter in and make use of such completed parts of the project. Such use or occupancy shall in no case be construed as an acceptance of any work, materials or Services.

### XV. CLEANING UP

The CONTRACTOR shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees or Services, and at the completion of the Services it shall remove all its rubbish from and about the project, and all its tools, scaffolding and surplus materials and shall leave the premises "broom-clean" or its equivalent, unless more exactly specified. In case of dispute, the OWNER may remove the rubbish and charge the cost to the CONTRACTOR.

### XVI. FINAL PAYMENT

Final payment, constituting the entire unpaid balance for the Contract Sum, shall be paid by the OWNER to the CONTRACTOR when the Services have been completed, the Contract fully performed, and all occupancy or related municipal approvals received and, if applicable, a final Certificate for Payment has been issued by the Architect.

### XVII. OWNERSHIP OF DOCUMENTS

All drawings, notes, documents, plans, and specifications or other material to be developed under this Agreement shall become the property of the OWNER and be promptly delivered to the OWNER upon the completion of Services under this Agreement or sooner upon OWNER's request or the termination of this Agreement. The CONTRACTOR shall be responsible for the protection and/or replacement of any work or materials in its possession, including work or materials provided to the CONTRACTOR by the OWNER. The OWNER agrees that it will not use the construction plans and specifications developed under this Agreement for any project other than the project specified herein without the written consent of the CONTRACTOR, which consent shall not be unreasonably withheld.

## XVIII. DISCLAIMER

CONTRACTOR has inspected the conditions of the premises and with full knowledge thereof agrees to take them as is, with no warranties express or implied excepting those express statements in this Agreement.

## XIX. FORCE MAJEURE

Provided such party gives written notice to the other of such event, a party shall not be liable for its failure to perform its respective obligations under this Agreement, if prevented from so doing by any cause beyond the reasonable control of such party such as, but not limited, to strikes, lockouts, or failure of supply or inability by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to perform such obligations, or because of war or other emergency. The time within which such obligations shall be performed shall be extended for a period of time equivalent to the delay from such cause.

## XX. NON-WAIVER

Except as expressly provided in this Agreement, the failure or waiver, or successive failures or waivers on the part of either party hereto, in the enforcement of any paragraph or provision of this Agreement shall not render the same invalid nor impair the right of either party hereto, its successors or permitted assigns, to enforce the same in the event of any subsequent breach thereof.

## XXI. NOTICES

Notices hereunder shall be deemed sufficient if sent by U.S. Certified mail as follows:

TO OWNER:	James Ashe, Town of Kittery Town Manager Town of Kittery 200 Rogers Road Kittery, Maine 03904
TO CONTRACTOR:	A&W Maintenance, Inc Attn: Danny Warren, President P.O. Box 1206 Carver, Ma 02330

## XXII. REMEDIES

Except as otherwise agreed by the parties in writing, all disputes, claims, counterclaims and other matters in question between the OWNER and the CONTRACTOR arising out of or relating to this Agreement shall be decided by a Maine court of competent

jurisdiction. This Agreement is made and shall be construed under the laws of the State of Maine. Except as otherwise expressly agreed by the parties in writing, exclusive venue for any such civil action shall be in Maine.

### XXIII. COMPLIANCE WITH APPLICABLE LAWS

The CONTRACTOR agrees that it and its subcontractors, if any, shall comply with all applicable federal, State and local statutes, laws, rules, regulations, codes, ordinances, orders and resolutions in the performance of Services under this agreement.

### XXIV. RELEASE OF INFORMATION

During the performance of the Services, any material, prepared or assembled by the CONTRACTOR under this Agreement shall not be made available to any individual or organization by the CONTRACTOR other than as called for herein without prior written authorization from the OWNER.

### XXV. PERFORMANCE & PAYMENT BONDS

The Contractor must obtain and maintain during the term of this Services Agreement, at its sole cost and expense, and file with the Owner, a performance and a payment bond running to the Owner. Each bond is to be in the full Contract amount and issued by a surety qualified and permitted to do business as a surety in the State of Maine. The bonds are to guarantee the faithful performance by Contractor of all its obligations under this Agreement and for the protection of the claimants supplying labor and/materials to the contractor or the Contractor's subcontractors. Each bond is to be in a form acceptable to the Owner and must to comply in all respects with 14 M.R.S. sec. 871(b). The bonds are to remain in effect for the entire duration of the Contractor's guarantee obligations.

### XXVI. EXTENT OF AGREEMENT

This Agreement (and the Contractor's Proposal Rev. #3 dated September 22, 2011 attached hereto and hereby incorporated into this Agreement) represent(s) the entire and integrated Agreement between OWNER and the CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both OWNER and the CONTRACTOR.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Witness

OWNER

By:

Town of Kittery - Town Manager

CONTRACTOR

A&W Maintenance, Inc

By:

Its

President

Witness